

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

CHRISTOPHER SELLS, and others

Defendants.

Case No. 11-cv-04941 CW (NC)

**ORDER DENYING MOTION TO
COMPEL**

Re: Dkt. Nos. 49, 66

Defendant Timothy Murawski moved to compel the SEC to produce responses to his requests for production (RFPs) and interrogatories, which seek documents and information concerning nonparty Jessica Ayars Dubois. The SEC's claims against Murawski are based in part on the testimony that Dubois provided to the SEC. On August 31, 2012, this Court found that the documents Murawski sought are protected work product under *Hickman v. Taylor*, 329 U.S. 495 (1947). The Court granted in part and denied in part Murawski's motion, ordered the SEC to respond to interrogatory set one, number two, and ordered the SEC to submit documents SEC000001-11 and SEC0000095-96 for *in camera* review. Dkt. No. 66. The remaining issue is whether Murawski has the right to discover these documents.

Under *Hickman*, work product can be discovered only in the rare situation in which the movant makes "a far stronger showing of necessity and unavailability by other means"

Case No. 11-cv-04941 CW (NC)
ORDER DENYING MOTION TO
COMPEL

1 than the one required by Rule 26(b)(3). *Upjohn Co. v. United States*, 449 U.S. 383, 401-02
2 (1981). Under Rule 26(b)(3), materials protected by the work-product doctrine may be
3 discovered if: (i) they are otherwise discoverable under Rule 26(b)(1); and (ii) the party
4 shows that it has substantial need for the materials to prepare its case and cannot, without
5 undue hardship, obtain their substantial equivalent by other means.” Fed. R. Civ. P.
6 26(b)(3)(A).

7 After reviewing SEC000001-11 and SEC0000095-96 *in camera*, the Court denies
8 Murawski’s motion to compel. The SEC’s response to interrogatory set one, number two
9 provides Murawski with the facts contained in SEC000001-11, and so its content is
10 available to him by other means. As to SEC0000095-96, the Court finds that Murawski has
11 not made a showing of substantial need. Although the SEC did not disclose the facts
12 contained in SEC0000095-96 in its interrogatory response, SEC0000095-96 is not
13 responsive to that interrogatory; it concerns a different subject matter. Furthermore, it does
14 not contain any of the facts Murawski seeks: when the SEC and Dubois met; whether the
15 SEC kept records of those meetings; and whether they discussed and whether Dubois
16 confessed to the falsifications of documents. Dkt. No. 49 at 15.

17 The SEC also submitted for *in camera* review documents SEC0004723-4732, which
18 were not the subject of Murawski’s initial motion to compel and the existence of which
19 were disclosed to defendants only after this Court ruled on the motion. These documents
20 are also protected work product under *Hickman*. In addition, the SEC has already disclosed
21 the facts contained in SEC0004723-4732 in its response to interrogatory number two,
22 thereby making the information available to Murawski.

23 //

24 //

25 //

26 //


27 //

28 //

1 Accordingly, the Court DENIES Murawski's motion to compel production of
2 SEC000001-11, SEC0000095-96, and SEC0004723-4732. Any party may file objections to
3 this order within fourteen days of the date the order is filed. Fed. R. Civ. P. 72(a).

4 IT IS SO ORDERED.

5 Date: October 24, 2012


Nathanael M. Cousins
United States Magistrate Judge